

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation
Against:**

DAVID AL MCDONOUGH, M.D.

Case No. 800-2015-013411

**Physician's and Surgeon's
Certificate No. G73043**

Respondent

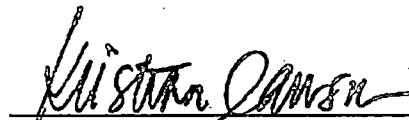
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on September 28, 2018.

IT IS SO ORDERED: August 29, 2018.

MEDICAL BOARD OF CALIFORNIA



Kristina Lawson, JD, Chair
Panel B

1 XAVIER BECERRA
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
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9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 800-2015-013411

12 DAVID AL McDONOUGH, M.D.

OAH No. 2018041286

13 7813 West Sunset Boulevard
14 Los Angeles, California 90046-3305

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Physician's and Surgeon's Certificate G 73043,
16 Respondent.

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19 In the interest of a prompt and speedy settlement of this matter, consistent with the public
20 interest and the responsibility of the Medical Board of California (Board), the parties hereby
21 agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to
22 the Board for approval and adoption as the final disposition of the Accusation.

23 PARTIES

24 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Board. She
25 brought this action solely in her official capacity and is represented in this matter by Xavier
26 Becerra, Attorney General of the State of California, by Chris Leong, Deputy Attorney General.

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2. Respondent David Al McDonough, M.D. (Respondent) is represented in this proceeding by attorney John Paul Dratz, Jr., whose address is: 3278 Wilshire Boulevard, Apt. 201, Los Angeles, California 90010.

3. On December 31, 1991, the Board issued Physician's and Surgeon's Certificate-No. G 73043 to Respondent. That license was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2015-013411, and will expire on July 31, 2019, unless renewed.

JURISDICTION

4. Accusation No. 800-2015-013411 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on April 4, 2018. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2015-013411 is attached as Exhibit A and is incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2015-013411. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 CULPABILITY

2 9. Respondent understands and agrees that the charges and allegations in Accusation
3 No. 800-2015-013411, if proven at a hearing, constitute cause for imposing discipline upon his
4 Physician's and Surgeon's Certificate.

5 10. For the purpose of resolving the Accusation without the expense and uncertainty of
6 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
7 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest
8 those charges.

9 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
10 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
11 Disciplinary Order below.

12 12. Respondent agrees that if he ever petitions for early termination of probation or
13 modification of probation, or if the Board ever petitions for revocation of probation, all of the
14 charges and allegations contained in Accusation No. 800-2015-013411, shall be deemed true,
15 correct and fully admitted by Respondent for purpose of that proceeding or any other licensing
16 proceeding involving Respondent in the State of California.

17 CONTINGENCY

18 13. This stipulation shall be subject to approval by the Medical Board of California.
19 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
20 Board of California may communicate directly with the Board regarding this stipulation and
21 settlement, without notice to or participation by Respondent or his counsel. By signing the
22 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
23 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
24 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
25 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
26 action between the parties, and the Board shall not be disqualified from further action by having
27 considered this matter.

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1 14. The parties understand and agree that Portable Document Format (PDF) and facsimile
2 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
3 signatures thereto, shall have the same force and effect as the originals.

4 15. In consideration of the foregoing admissions and stipulations, the parties agree that
5 the Board may, without further notice or formal proceeding, issue and enter the following
6 Disciplinary Order:

7 DISCIPLINARY ORDER

8 **IT IS HEREBY ORDERED THAT** Physician's and Surgeon's Certificate No. G 73043
9 issued to Respondent David Al McDonough, M.D. is revoked. However, the revocation is stayed
10 and Respondent is placed on probation for five (5) years on the following terms and conditions.

11 1. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar
12 days of the effective date of this Decision, Respondent shall enroll in a professionalism program,
13 that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.
14 Respondent shall participate in and successfully complete that program. Respondent shall
15 provide any information and documents that the program may deem pertinent. Respondent shall
16 successfully complete the classroom component of the program not later than six (6) months after
17 Respondent's initial enrollment, and the longitudinal component of the program not later than the
18 time specified by the program, but no later than one (1) year after attending the classroom
19 component. The professionalism program shall be at Respondent's expense and shall be in
20 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

21 A professionalism program taken after the acts that gave rise to the charges in the
22 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
23 or its designee, be accepted towards the fulfillment of this condition if the program would have
24 been approved by the Board or its designee had the program been taken after the effective date of
25 this Decision.

26 Respondent shall submit a certification of successful completion to the Board or its
27 designee not later than 15 calendar days after successfully completing the program or not later
28 than 15 calendar days after the effective date of the Decision, whichever is later.

2. CONTROLLED SUBSTANCES - ABSTAIN FROM USE. Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, Respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

If the Board does not file an accusation or petition to revoke probation within 30 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

3. ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain completely from the use of products or beverages containing alcohol.

4. CLINICAL DIAGNOSTIC EVALUATIONS AND REPORTS: Within thirty (30) calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed board certified physician and surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with

1 Respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and
2 independent evaluation. The clinical diagnostic evaluation report shall set forth, in the
3 evaluator's opinion, whether Respondent has a substance abuse problem, whether Respondent is a
4 threat to himself or herself or others, and recommendations for substance abuse treatment,
5 practice restrictions, or other recommendations related to Respondent's rehabilitation and ability
6 to practice safely. If the evaluator determines during the evaluation process that Respondent is a
7 threat to himself or herself or others, the evaluator shall notify the Board within twenty-four (24)
8 hours of such a determination.

9 In formulating his or her opinion as to whether Respondent is safe to return to either part-
10 time or full-time practice and what restrictions or recommendations should be imposed, including
11 participation in an inpatient or outpatient treatment program, the evaluator shall consider the
12 following factors: Respondent's license type; Respondent's history; Respondent's documented
13 length of sobriety (i.e., length of time that has elapsed since Respondent's last substance use);
14 Respondent's scope and pattern of substance abuse; Respondent's treatment history, medical
15 history and current medical condition; the nature, duration and severity of Respondent's
16 substance abuse problem or problems; and whether Respondent is a threat to himself or herself or
17 the public.

18 For all clinical diagnostic evaluations, a final written report shall be provided to the Board
19 no later than ten (10) days from the date the evaluator is assigned the matter. If the evaluator
20 requests additional information or time to complete the evaluation and report, an extension may
21 be granted, but shall not exceed thirty (30) days from the date the evaluator was originally
22 assigned the matter.

23 The Board shall review the clinical diagnostic evaluation report within five (5) business
24 days of receipt to determine whether Respondent is safe to return to either part-time or full-time
25 practice and what restrictions or recommendations shall be imposed on Respondent based on the
26 recommendations made by the evaluator. Respondent shall not be returned to practice until he or
27 she has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating
28 that he or she has not used, consumed, ingested, or administered to himself or herself a prohibited

1 substance, as defined in section 1361.51, subdivision (e), of Title 16 of the California Code of
2 Regulations.

3 Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall
4 not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic
5 evaluation, including any and all testing deemed necessary by the examiner, the Board or its
6 designee, shall be borne by the licensee.

7 Respondent shall not engage in the practice of medicine until notified by the Board or its
8 designee that he or she is fit to practice medicine safely. The period of time that Respondent is
9 not practicing medicine shall not be counted toward completion of the term of probation.

10 Respondent shall undergo biological fluid testing as required in this Decision at least two (2)
11 times per week while awaiting the notification from the Board if he or she is fit to practice
12 medicine safely.

13 Respondent shall comply with all restrictions or conditions recommended by the examiner
14 conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being notified
15 by the Board or its designee.

16 5. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to
17 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.
18 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair
19 follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall
20 make daily contact with the Board or its designee to determine whether biological fluid testing is
21 required. Respondent shall be tested on the date of the notification as directed by the Board or its
22 designee. The Board may order a Respondent to undergo a biological fluid test on any day, at
23 any time, including weekends and holidays. Except when testing on a specific date as ordered by
24 the Board or its designee, the scheduling of biological fluid testing shall be done on a random
25 basis. The cost of biological fluid testing shall be borne by the Respondent.

26 During the first year of probation, Respondent shall be subject to 52 to 104 random tests.
27 During the second year of probation and for the duration of the probationary term, up to five (5)
28 years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no

1 positive biological fluid tests in the previous five (5) consecutive years of probation, may testing
2 be reduced to one (1) time per month. Nothing precludes the Board from increasing the number
3 of random tests to the first-year level of frequency for any reason.

4 Prior to practicing medicine, Respondent shall contract with a laboratory or service,
5 approved in advance by the Board or its designee, that will conduct random, unannounced,
6 observed, biological fluid testing and meets all of the following standards:

7 (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry
8 Association or have completed the training required to serve as a collector for the United
9 States Department of Transportation.

10 (b) Its specimen collectors conform to the current United States Department of
11 Transportation Specimen Collection Guidelines.

12 (c) Its testing locations comply with the Urine Specimen Collection Guidelines published
13 by the United States Department of Transportation without regard to the type of test
14 administered.

15 (d) Its specimen collectors observe the collection of testing specimens.

16 (e) Its laboratories are certified and accredited by the United States Department of Health
17 and Human Services.

18 (f) Its testing locations shall submit a specimen to a laboratory within one (1) business day
19 of receipt and all specimens collected shall be handled pursuant to chain of custody
20 procedures. The laboratory shall process and analyze the specimens and provide legally
21 defensible test results to the Board within seven (7) business days of receipt of the
22 specimen. The Board will be notified of non-negative results within one (1) business day
23 and will be notified of negative test results within seven (7) business days.

24 (g) Its testing locations possess all the materials, equipment, and technical expertise
25 necessary in order to test Respondent on any day of the week.

26 (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens
27 for the detection of alcohol and illegal and controlled substances.

28 (i) It maintains testing sites located throughout California.

1 (j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line
2 computer database that allows the Respondent to check in daily for testing.

3 (k) It maintains a secure, HIPAA-compliant website or computer system that allows staff
4 access to drug test results and compliance reporting information that is available 24 hours a
5 day.

6 (l) It employs or contracts with toxicologists that are licensed physicians and have
7 knowledge of substance abuse disorders and the appropriate medical training to interpret
8 and evaluate laboratory biological fluid test results, medical histories, and any other
9 information relevant to biomedical information.

10 (m) It will not consider a toxicology screen to be negative if a positive result is obtained
11 while practicing, even if the Respondent holds a valid prescription for the substance.

12 Prior to changing testing locations for any reason, including during vacation or other travel,
13 alternative testing locations must be approved by the Board and meet the requirements above.

14 The contract shall require that the laboratory directly notify the Board or its designee of
15 non-negative results within one (1) business day and negative test results within seven (7)
16 business days of the results becoming available. Respondent shall maintain this laboratory or
17 service contract during the period of probation.

18 A certified copy of any laboratory test result may be received in evidence in any
19 proceedings between the Board and Respondent.

20 If a biological fluid test result indicates Respondent has used, consumed, ingested, or
21 administered to himself or herself a prohibited substance, the Board shall order Respondent to
22 cease practice and instruct Respondent to leave any place of work where Respondent is practicing
23 medicine or providing medical services. The Board shall immediately notify all of Respondent's
24 employers, supervisors and work monitors, if any, that Respondent may not practice medicine or
25 provide medical services while the cease-practice order is in effect.

26 A biological fluid test will not be considered negative if a positive result is obtained while
27 practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited
28 substance use exists, the Board shall lift the cease-practice order within one (1) business day.

1 After the issuance of a cease-practice order, the Board shall determine whether the positive
2 biological fluid test is in fact evidence of prohibited substance use by consulting with the
3 specimen collector and the laboratory, communicating with the licensee, his or her treating
4 physician(s), other health care provider, or group facilitator, as applicable.

5 For purposes of this condition, the terms "biological fluid testing" and "testing" mean the
6 acquisition and chemical analysis of a Respondent's urine, blood, breath, or hair.

7 For purposes of this condition, the term "prohibited substance" means an illegal drug, a
8 lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by
9 Respondent and approved by the Board, alcohol, or any other substance the Respondent has been
10 instructed by the Board not to use, consume, ingest, or administer to himself or herself.

11 If the Board confirms that a positive biological fluid test is evidence of use of a prohibited
12 substance, Respondent has committed a major violation, as defined in section 1361.52(a), and the
13 Board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to
14 any other terms or conditions the Board determines are necessary for public protection or to
15 enhance Respondent's rehabilitation.

16 6. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within thirty (30) days
17 of the effective date of this Decision, Respondent shall submit to the Board or its designee, for its
18 prior approval, the name of a substance abuse support group which he or she shall attend for the
19 duration of probation. Respondent shall attend substance abuse support group meetings at least
20 once per week, or as ordered by the Board or its designee. Respondent shall pay all substance
21 abuse support group meeting costs.

22 The facilitator of the substance abuse support group meeting shall have a minimum of three
23 (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed
24 or certified by the state or nationally certified organizations. The facilitator shall not have a
25 current or former financial, personal, or business relationship with Respondent within the last five
26 (5) years. Respondent's previous participation in a substance abuse group support meeting led by
27 the same facilitator does not constitute a prohibited current or former financial, personal, or
28 business relationship.

1 The facilitator shall provide a signed document to the Board or its designee showing
2 Respondent's name, the group name, the date and location of the meeting, Respondent's
3 attendance, and Respondent's level of participation and progress. The facilitator shall report any
4 unexcused absence by Respondent from any substance abuse support group meeting to the Board,
5 or its designee, within twenty-four (24) hours of the unexcused absence.

6 7. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEE. Within
7 thirty (30) calendar days of the effective date of this Decision, Respondent shall submit to the
8 Board or its designee for prior approval as a worksite monitor, the name and qualifications of one
9 or more licensed physician and surgeon, other licensed health care professional if no physician
10 and surgeon is available, or, as approved by the Board or its designee, a person in a position of
11 authority who is capable of monitoring the Respondent at work.

12 The worksite monitor shall not have a current or former financial, personal, or familial
13 relationship with Respondent, or any other relationship that could reasonably be expected to
14 compromise the ability of the monitor to render impartial and unbiased reports to the Board or its
15 designee. If it is impractical for anyone but Respondent's employer to serve as the worksite
16 monitor, this requirement may be waived by the Board or its designee, however, under no
17 circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

18 The worksite monitor shall have an active unrestricted license with no disciplinary action
19 within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms
20 and conditions of Respondent's disciplinary order and agrees to monitor Respondent as set forth
21 by the Board or its designee.

22 Respondent shall pay all worksite monitoring costs.

23 The worksite monitor shall have face-to-face contact with Respondent in the work
24 environment on as frequent a basis as determined by the Board or its designee, but not less than
25 once per week; interview other staff in the office regarding Respondent's behavior, if requested
26 by the Board or its designee; and review Respondent's work attendance.

27 The worksite monitor shall verbally report any suspected substance abuse to the Board and
28 Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected

1 substance abuse does not occur during the Board's normal business hours, the verbal report shall
2 be made to the Board or its designee within one (1) hour of the next business day. A written
3 report that includes the date, time, and location of the suspected abuse; Respondent's actions; and
4 any other information deemed important by the worksite monitor shall be submitted to the Board
5 or its designee within 48 hours of the occurrence.

6 The worksite monitor shall complete and submit a written report monthly or as directed by
7 the Board or its designee which shall include the following: (1) Respondent's name and
8 Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3)
9 the worksite monitor's license number, if applicable; (4) the location or location(s) of the
10 worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the
11 names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance;
12 (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can
13 lead to suspected substance abuse by Respondent. Respondent shall complete any required
14 consent forms and execute agreements with the approved worksite monitor and the Board, or its
15 designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

16 If the worksite monitor resigns or is no longer available, Respondent shall, within five (5)
17 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior
18 approval, the name and qualifications of a replacement monitor who will be assuming that
19 responsibility within fifteen (15) calendar days. If Respondent fails to obtain approval of a
20 replacement monitor within sixty (60) calendar days of the resignation or unavailability of the
21 monitor, Respondent shall receive a notification from the Board or its designee to cease the
22 practice of medicine within three (3) calendar days after being so notified. Respondent shall
23 cease the practice of medicine until a replacement monitor is approved and assumes monitoring
24 responsibility.

25 8. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION. Within seven (7)
26 days of the effective date of this Decision, Respondent shall provide to the Board the names,
27 physical addresses, mailing addresses, and telephone numbers of any and all employers and
28 supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's

1 worksite monitor, and Respondent's employers and supervisors to communicate regarding
2 Respondent's work status, performance, and monitoring.

3 For purposes of this section, "supervisors" shall include the Chief of Staff and Health or
4 Well Being Committee Chair, or equivalent, if applicable, when the Respondent has medical staff
5 privileges.

6 9. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING
7 LICENSEES. Failure to fully comply with any term or condition of probation is a violation of
8 probation.

9 A. If Respondent commits a major violation of probation as defined by section
10 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take
11 one or more of the following actions:

12 (1) Issue an immediate cease-practice order and order Respondent to undergo a clinical
13 diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of
14 Title 16 of the California Code of Regulations, at Respondent's expense. The cease-practice
15 order issued by the Board or its designee shall state that Respondent must test negative for at least
16 a month of continuous biological fluid testing before being allowed to resume practice. For
17 purposes of determining the length of time a Respondent must test negative while undergoing
18 continuous biological fluid testing following issuance of a cease-practice order, a month is
19 defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until
20 notified in writing by the Board or its designee that he or she may do so.

21 (2) Increase the frequency of biological fluid testing.

22 (3) Refer Respondent for further disciplinary action, such as suspension, revocation, or
23 other action as determined by the Board or its designee.

24 B. If Respondent commits a minor violation of probation as defined by section
25 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take
26 one or more of the following actions:

27 (1) Issue a cease-practice order;

28 (2) Order practice limitations;

- 1 (3) Order or increase supervision of Respondent;
- 2 (4) Order increased documentation;
- 3 (5) Issue a citation and fine, or a warning letter;
- 4 (6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in
- 5 accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of
- 6 Regulations, at Respondent's expense;
- 7 (7) Take any other action as determined by the Board or its designee.

8 C. Nothing in this Decision shall be considered a limitation on the Board's authority

9 to revoke Respondent's probation if he or she has violated any term or condition of probation. If

10 Respondent violates probation in any respect, the Board, after giving Respondent notice and the

11 opportunity to be heard, may revoke probation and carry out the disciplinary order that was

12 stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed

13 against Respondent during probation, the Board shall have continuing jurisdiction until the matter

14 is final, and the period of probation shall be extended until the matter is final.

15 10. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the

16 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the

17 Chief Executive Officer at every hospital where privileges or membership are extended to

18 Respondent, at any other facility where Respondent engages in the practice of medicine,

19 including all physician and locum tenens registries or other similar agencies, and to the Chief

20 Executive Officer at every insurance carrier which extends malpractice insurance coverage to

21 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15

22 calendar days.

23 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

24 11. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE

25 NURSES. During probation, Respondent is prohibited from supervising physician assistants and

26 advanced practice nurses.

27 12. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all

28 rules governing the practice of medicine in California and remain in full compliance with any

1 court ordered criminal probation, payments, and other orders.

2 13. QUARTERLY DECLARATIONS. Respondent shall submit quarterly
3 declarations under penalty of perjury on forms provided by the Board, stating whether there has
4 been compliance with all the conditions of probation.

5 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
6 of the preceding quarter.

7 14. GENERAL PROBATION REQUIREMENTS.

8 Compliance with Probation Unit

9 Respondent shall comply with the Board's probation unit.

10 Address Changes

11 Respondent shall, at all times, keep the Board informed of Respondent's business and
12 residence addresses, email address (if available), and telephone number. Changes of such
13 addresses shall be immediately communicated in writing to the Board or its designee. Under no
14 circumstances shall a post office box serve as an address of record, except as allowed by Business
15 and Professions Code section 2021(b).

16 Place of Practice

17 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
18 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
19 facility.

20 License Renewal

21 Respondent shall maintain a current and renewed California physician's and surgeon's
22 license.

23 Travel or Residence Outside California

24 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
25 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
26 (30) calendar days.

27 In the event Respondent should leave the State of California to reside or to practice,
28 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of

1 departure and return.

2 15. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
3 available in person upon request for interviews either at Respondent's place of business or at the
4 probation unit office, with or without prior notice throughout the term of probation.

5 16. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board
6 or its designee in writing within 15 calendar days of any periods of non-practice lasting more than
7 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
8 defined as any period of time Respondent is not practicing medicine as defined in Business and
9 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
10 patient care, clinical activity or teaching, or other activity as approved by the Board. If
11 Respondent resides in California and is considered to be in non-practice, Respondent shall
12 comply with all terms and conditions of probation. All time spent in an intensive training
13 program which has been approved by the Board or its designee shall not be considered non-
14 practice and does not relieve Respondent from complying with all the terms and conditions of
15 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
16 on probation with the medical licensing authority of that state or jurisdiction shall not be
17 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
18 period of non-practice.

19 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
20 months, Respondent shall successfully complete the Federation of State Medical Boards' Special
21 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
22 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model
23 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

24 Respondent's period of non-practice while on probation shall not exceed two (2) years.

25 Periods of non-practice will not apply to the reduction of the probationary term.

26 Periods of non-practice for a Respondent residing outside of California will relieve
27 Respondent of the responsibility to comply with the probationary terms and conditions with the
28 exception of this condition and the following terms and conditions of probation: Obey All Laws;

1 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
2 Controlled Substances; and Biological Fluid Testing.

3 17. COMPLETION OF PROBATION. Respondent shall comply with all financial
4 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
5 completion of probation. Upon successful completion of probation, Respondent's certificate shall
6 be fully restored.

7 18. VIOLATION OF PROBATION. Failure to fully comply with any term or
8 condition of probation is a violation of probation. If Respondent violates probation in any
9 respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke
10 probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to
11 Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation,
12 the Board shall have continuing jurisdiction until the matter is final, and the period of probation
13 shall be extended until the matter is final.

14 19. LICENSE SURRENDER. Following the effective date of this Decision, if
15 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
16 the terms and conditions of probation, Respondent may request to surrender his or her license.
17 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
18 determining whether or not to grant the request, or to take any other action deemed appropriate
19 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
20 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
21 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
22 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
23 application shall be treated as a petition for reinstatement of a revoked certificate.

24 20. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
25 with probation monitoring each and every year of probation, as designated by the Board, which
26 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
27 California and delivered to the Board or its designee no later than January 31 of each calendar
28 year.

1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
3 discussed it with my attorney, John Paul Dratz, Jr. I understand the stipulation and the effect it
4 will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
5 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
6 Decision and Order of the Medical Board of California.

7
8 DATED: 5/16/18

David Alan McDonough
9 DAVID AL MCDONOUGH, M.D.
Respondent

10 I have read and fully discussed with Respondent David Al McDonough, M.D. the terms and
11 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
12 I approve its form and content.

13
14 DATED: _____

JOHN PAUL DRATZ, JR.
Attorney for Respondent

16 ENDORSEMENT

17 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
18 submitted for consideration by the Medical Board of California.

19
20 Dated:

Respectfully submitted,

21 XAVIER BECERRA
Attorney General of California
22 ROBERT MCKIM BELL
Supervising Deputy Attorney General

23
24 CHRIS LEONG
Deputy Attorney General
25 Attorneys for Complainant

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Exhibit A

Accusation No. 800-2015-013411

1 XAVIER BECERRA
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 CHRIS LEONG
Deputy Attorney General
4 State Bar No. 141079
California Department of Justice
5 300 South Spring Street, Suite 1702
Los Angeles, California 90013
6 Telephone: (213) 269-6460
Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO April 4, 2018
BY: R. P. W. J. S. ANALYST

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2015-013411

13 DAVID AL McDONOUGH, M.D.

A C C U S A T I O N

14 7813 West Sunset Boulevard
Los Angeles, California 90046

15 Physician's and Surgeon's Certificate
16 No. G 73043,

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
22 capacity as the Executive Director of the Medical Board of California ("Board").

23 2. On December 3, 1991, the Board issued Physician's and Surgeon's Certificate
24 Number G 73043 to David Al McDonough, M.D. (Respondent). That license was in full force
25 and effect at all times relevant to the charges brought herein and will expire on July 31, 2019,
26 unless renewed.

27 //

28 //

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

1 “(f) Any action or conduct which would have warranted the denial of a certificate.

2 “(g) The practice of medicine from this state into another state or country without meeting
3 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
4 apply to this subdivision. This subdivision shall become operative upon the implementation of the
5 proposed registration program described in Section 2052.5.

6 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
7 participate in an interview by the board. This subdivision shall only apply to a certificate holder
8 who is the subject of an investigation by the board.”

9 6. Section 820 of the Code states:

10 "Whenever it appears that any person holding a license, certificate or permit under this
11 division or under any initiative act referred to in this division may be unable to practice his or her
12 profession safely because the licentiate's ability to practice is impaired due to mental illness, or
13 physical illness affecting competency, the licensing agency may order the licentiate to be examined
14 by one or more physicians and surgeons or psychologists designated by the agency. The report of
15 the examiners shall be made available to the licentiate and may be received as direct evidence in
16 proceedings conducted pursuant to Section 822."

17 7. Section 821 of the Code provides that the licentiate's failure to comply with an order
18 issued under section 820 shall constitute grounds for the suspension or revocation of the
19 licentiate's certificate of license.

20 8. Section 822 of the Code states:

21 "If a licensing agency determines that its licentiate's ability to practice his or her profession
22 safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the
23 licensing agency may take action by any one of the following methods:

24 "(a) Revoking the licentiate's certificate or license.

25 "(b) Suspending the licentiate's right to practice.

26 "(c) Placing the licentiate on probation.

27 "(d) Taking such other action in relation to the licentiate as the licensing agency in its
28 discretion deems proper.

1 "The licensing section shall not reinstate a revoked or suspended certificate or license until it
2 has received competent evidence of the absence or control of the condition which caused its action
3 and until it is satisfied that with due regard for the public health and safety the person's right to
4 practice his or her profession may be safely reinstated."

5 **FIRST CAUSE FOR DISCIPLINE**

6 (Failure to Comply with an Order to Undergo a Mental and Physical Examination)

7 9. Respondent is subject to disciplinary action under section 821 of the Code in that he
8 failed to comply with an Order to Undergo a Mental and Physical Examination. The circumstances
9 are as follows:

10 10. Respondent was the subject of an anonymous complaint filed with the Board's Central
11 Complaint Unit ("CCU") alleging personal drug abuse. After receiving the complaint, the Board
12 opened an investigative matter.

13 11. In connection with that investigation, Dr. McDonough was interviewed on February 1,
14 2017. He denied use of any illicit or recreational drugs. He provided a voluntary urine sample.
15 The sample was examined by a laboratory and tested positive for Amphetamine, Ethylgucuronide
16 (alcohol) and Methamphetamine.

17 12. On October 26, 2017, The Board found that there was reasonable cause to believe that
18 Respondent may be unable to practice medicine safely because his ability to practice is impaired
19 due to a physical and/or mental illness affecting his competency, within the meaning of Business
20 and Professions Code section 820. On that date, the Board ordered Respondent to undergo drug
21 testing and mental and physical examinations (the "Order") within 10 days of the date of service of
22 the Order. The Order also stated that the failure of Respondent to comply with the order
23 compelling mental and physical examinations shall constitute grounds for disciplinary action
24 suspending or revoking Respondent's physician's and surgeon's certificate.

25 13. On October 26, 2017, the Discipline Coordination Unit of the Board wrote a letter to
26 Respondent, including a copy of the Order Compelling Mental and Physical Examinations, and
27 advising the Respondent that the examinations shall be conducted no later than 10 days from the
28 date of service of the Order. The Board's letter with a copy of the Order attached thereto, was

1 served on Respondent by certified and regular First Class mail on October 26, 2017, to his
2 address of record with the Board which at that time was: 7813 West Sunset Boulevard, Los
3 Angeles, California 90046.

4 14. Personal delivery of another copy of the Order Compelling Mental and Physical
5 Examinations was accomplished on January 11, 2018, at his office at the Olympia Medical
6 Center. In addition to the Order, the investigator provided information on how and when to
7 schedule an appointment to see the physician selected to perform a mental examination.

8 15. On January 25, 2018, Respondent did call the examining physician and scheduled an
9 appointment for the evaluations. It was scheduled for January 30, 2018 to begin at 2:20 p.m. By
10 4:20 p.m., two hours after his scheduled appointment, Respondent had still not arrived. The
11 examining physician then left the office and locked up for the day.

12 16. Respondent did not appear at the appointed time for his scheduled appointment and
13 evaluation. Pursuant to the Order dated October 26, 2017, Respondent was to submit to an
14 evaluation within 10 days of service of the Order, which time has now expired.

15 17. To date, Respondent has failed to submit to the ordered mental and physical
16 examinations by physicians designated by the Board. He has therefore failed to comply with an
17 Order within the meaning of section 821 of the Code.

18 18. Respondent's failure to comply with the Order provides the basis for revocation of
19 Respondent's license.

20 **SECOND CAUSE FOR DISCIPLINE**

21 (Unprofessional Conduct)

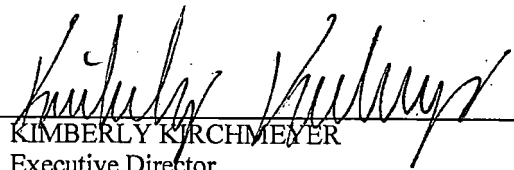
22 19. By reason of the matters alleged in the First Cause for Discipline, Respondent is
23 subject to disciplinary action for unprofessional conduct under section 2234 of the Code in that he
24 has failed to submit to the mental and physical examinations ordered by the Board.

25 **PRAYER**

26 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Medical Board of California issue a decision:
28

- 1 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 73043,
- 2 issued to David Al McDonough, M.D.;
- 3 2. Revoking, suspending or denying approval of his authority to supervise physician
- 4 assistants and advanced practice nurses;
- 5 3. If placed on probation, ordering him to pay the Board the costs of probation
- 6 monitoring; and
- 7 4. Taking such other and further action as deemed necessary and proper.

8
9 DATED: April 4, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

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